



**In the
Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71-685 and No. 71-691 — (Consolidated)

ROBERT J. LEHNHAUSEN, Director of Department of Local
Government Affairs of the State of Illinois,

Petitioner,

No. 71-685

vs.

LAKE SHORE AUTO PARTS CO., et al.,

Respondent.

EDWARD J. BARRETT, County Clerk of Cook County,
Illinois, et al.,

Petitioners,

No. 71-691

vs.

CLEMENS K. SHAPIRO, et al.,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Illinois.

**BRIEF OF RESPONDENTS CLEMENS K. SHAPIRO
AND MEMBERS OF HIS CLASS.**

ARGUMENT

Respondents Clemens K. Shapiro and members of his class are natural persons (individuals) who own personal property in Cook County, Illinois, which is used for their personal enjoyment and that of their families. They constitute one of the four district and separate classes who filed their complaint for relief jointly in the Circuit Court of Cook County, Illinois. The other three classes comprise the following:

2. Individuals who own personal property used for business purposes.

3. Partnerships owning personal property used for business purposes.

4. Corporations owning personal property.

It is the contention of the *Shapiro* respondents that amending Article IX-A of the Illinois Constitution of 1870 prohibited any personal property tax on personal property used for the enjoyment of themselves and their families. Their contention was sustained by Judge Donovan in the original action filed in the Circuit Court of Cook County. The Illinois Supreme Court overruled Judge Donovan, and this is one of the bones of contention in the case at bar.

These respondents find themselves in the rather fortunate and advantageous position of having their contention supported completely or to a limited degree by certain duly elected public officials. The Governor of the State of Illinois, the Attorney General of Illinois and the State's Attorney of Cook County, Illinois, each in his own

right, have filed with this Court their separate petitions for the issuance of a writ of certiorari. In their respective capacities as such officials, they have seen fit to seek redress from this Court to correct what they obviously consider a miscarriage of justice before the Illinois Supreme Court.

The Governor of Illinois has filed his *amicus curiae* brief in support of the issuance of a writ of certiorari, the Attorney General of Illinois has filed his Petition and Amended Petition for the issuance thereof and his Brief upon the granting of said writ by this Court, and the State's Attorney of Cook County has also filed his Petition for the issuance of the writ, which now stands as his Brief in this cause.

Having had the benefit of examining the pleadings already filed with the Clerk of this Court, these respondents deem the issues to be fully presented and argued therein. A rash of repetition and redundancy has already appeared in this case. Any further presentation would constitute a belaborment of the issues rather than be of any significant additional assistance to this Court in deciding the issues before it.

The *Shapiro* respondents deem it their duty to call the Court's attention to a variance between the contention raised by the Attorney General in his original as well as in his Amended Petition for certiorari on the one hand, and the contention advanced in his Brief filed after the granting of the writ. On page 38 of his original Petition for certiorari and on page 41 of his Amended Petition, the Attorney General pleaded in the alternative "that either the dissenting opinion of Justice Davis was correct, or that the decision of Judge Donovan in the *Shapiro* case was correct." However, in his Brief filed herein the Attor-

ney General has abandoned his alternative pleading and is now standing solely on his contention that only the dissenting opinion of Justice Davis was correct.

In view of the foregoing, these *Shapiro* respondents accept and adopt the presentation of the issues by the Attorney General of Illinois, but do not accept his contention that only the dissenting opinion of Justice Davis was correct. They do accept and adopt the presentation of the issues by the State's Attorney of Cook County in its entirety. Its sum and substance is to the effect that only the decision of Judge Donovan in the *Shapiro* case was correct.

CONCLUSION

Presented for this Court's consideration are four diverse and conflicting rulings by the Illinois courts in the case at bar as follows:

1. The majority opinion of the Illinois Supreme Court ruled that amending Article IX-A of the Illinois Constitution of 1870 violates the fourteenth amendment to the United States Constitution and is therefore unconstitutional.

2. The dissenting opinion of Justice Davis of the Illinois Supreme Court found that said Article IX-A did not violate said fourteenth amendment and that its effect was to retain the personal property tax on corporations while relieving *all* individuals from said tax.

3. Judge Dahl of the Circuit Court of Cook County ruled that said Article IX-A resulted in removing the personal property tax from the personal property of *all* corporations and *all* individuals.

4. Judge Donovan of the Circuit Court of Cook County ruled that said Article IX-A exempted the payment of personal property taxes by individuals on personal property owned by them and used for the personal enjoyment of themselves and their families.

The *Shapiro* respondents' contention, supported fully by the State's Attorney of Cook County and inclusively by the Attorney General of Illinois, is that the ruling of Judge Donovan of the Circuit Court of Cook County is correct. Therefore they respectfully pray that this Court find, order and decree that Amending Article IX-A of the Illinois Constitution of 1870 is valid and constitutional in all respects and is immune to attack under any provision of said Constitution and the United States Constitution, and that said Amending Article IX-A declares its prohibition as to any personal property tax on the personal property owned by individuals and used for their personal enjoyment and that of their families.

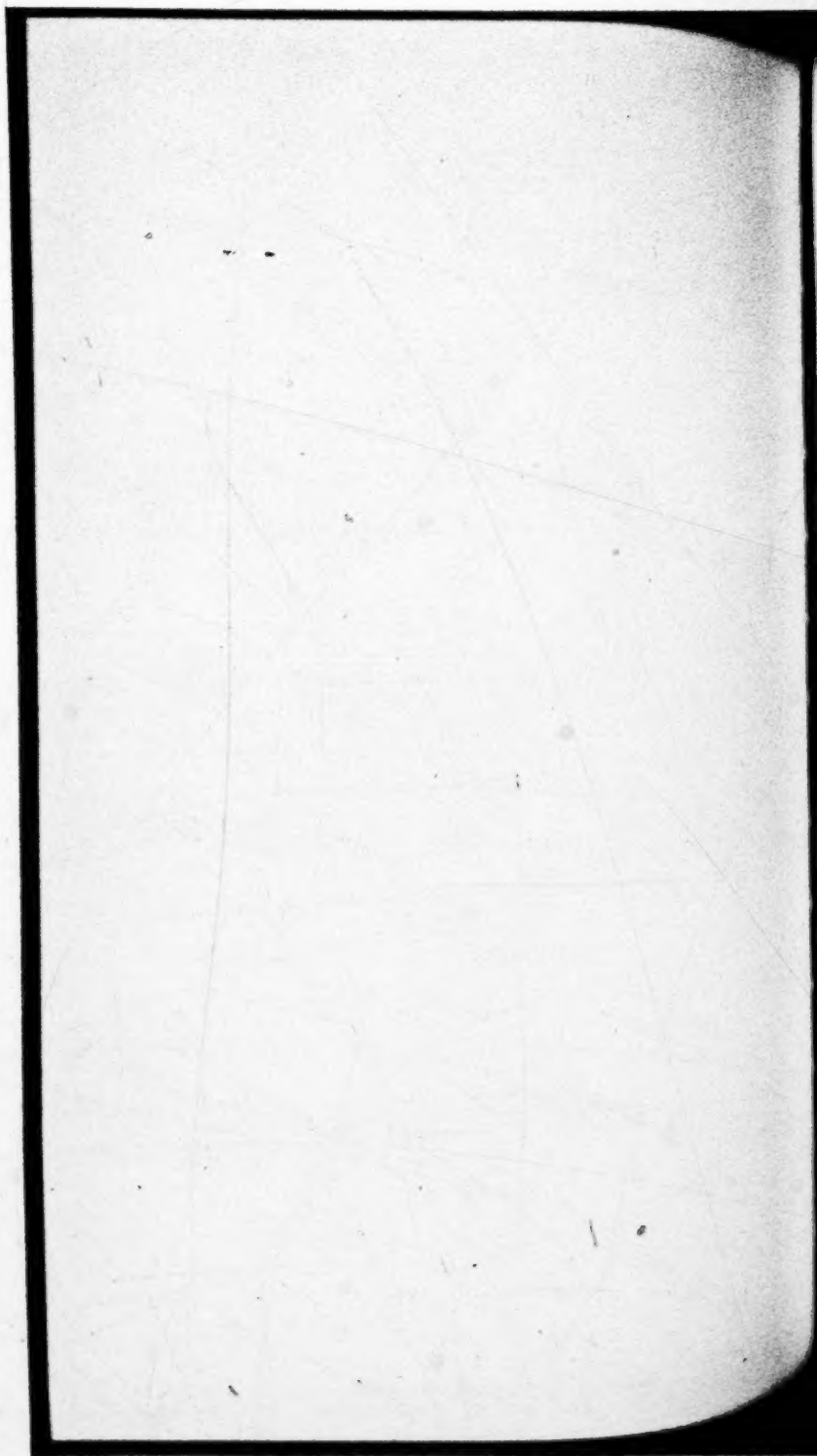
Respectfully submitted,

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MOTION FOR LEAVE TO FILE A BRIEF AS
AMICI CURIAE

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The American National Bank and Trust Company of Chicago; Chicago Title and Trust Company; Continental Illinois National Bank & Trust Company of Chicago; The First National Bank of Chicago; Harris Trust and Savings Bank; La Salle National Bank; The Northern Trust Company; Amalgamated Trust & Savings Bank; Beverly Bank; Chicago City Bank and Trust Company; Drovers National Bank; Exchange National Bank of Chicago; First Bank of Oak Park; First National Bank and Trust Company of Evanston; Mercantile National Bank of Chicago; National Boulevard Bank of Chicago; Northwest National Bank; Pioneer Trust & Savings Bank; Pullman Bank and Trust Company; Sears Bank and Trust Company; State National Bank; and Suburban Trust & Savings Bank, all being members of the Corporate Fiduciaries Association of Illinois, by their attorneys Concannon Dillon Snook & Morton, move for leave to file a Brief as Amici Curiae in the above entitled cases as consent of the attorneys for the petitioners and respondents has not been obtained, and in support thereof state as follows:

1. The interest of the members of the Corporate Fiduciaries Association of Illinois in these cases arises from the fact that each is authorized to accept and execute trusts in the State of Illinois, and that pursuant to said grant they have and are acting, either alone or as co-fiduciaries, in various fiduciary capacities, namely: testamentary trustee, trustee appointed by court, trustee under written agreement, declaration or instrument of trust, executor, administrator, administrator to collect, guardian, conservator, agent, custodian, custodian under

the Illinois Uniform Gift to Minors Act, depositary, and other like fiduciary capacities holding personal property for the benefit of natural persons.

2. Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, provides:

“Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals.”

3. The respondents in the cases herein allegedly represent natural persons owning personal property used for their own personal enjoyment and that of their families; natural persons conducting a business as a sole proprietor; natural persons operating a partnership business which owns personal property; and corporations owning personal property. The petitioners represent the citizens and people of the State of Illinois and Cook County, Illinois. Petitioners herein represent fiduciaries, both corporate and individual, whether acting as a sole fiduciary or a co-fiduciary, who are holding personal property for the use or benefit of natural persons.

4. The word “individuals” contained in Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, has been used synonymously with “natural persons” by the Supreme Court of the State of Illinois in the cause below.

WHEREFORE, Petitioners herein pray for leave to file a brief as amici curiae for the following reasons:

1. To show that the term “individuals” as utilized in Article IX-A of the Constitution of the State of Illinois of 1870, as amended and approved, was clearly intended to and does encompass all fiduciaries, both corporate and individual, whether acting as a sole fiduciary